



Jordan & Shannen:

First Nations children demand that the Canadian Government stop racially discriminating against them

SHADOW REPORT: Canada 3rd and 4th Periodic Report to the UNCRC

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DEDICATED TO JORDAN RIVER ANDERSON (AGE 5)
AND SHANNEN KOOSTACHIN (AGE 15)

We will never give up until your legacies
of culturally based equity are realized for
every First Nations child in Canada.

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WATCHEY... My name is Shannen Koostachin. I am an Mushkegowuk Innu from an isolated community called Attawapiskat First Nation. I have three brothers and three sisters. I am fourteen years old. I've graduated and finished elementary school called JR Nakogee Elementary School and going to go to school somewhere in down south just to have a proper education. I want to have a better education because I want to follow my dreams and grow up and study to be a lawyer. For the last eight years, I have never been in a real school since I've started my education. For what inspired me was when I realized in grade eight that I've been going to school in these portables for eight long struggling years. We put on our coats outside and battle through the seasons just to go to computers, gym and library. I was always taught by my parents to stand up and speak out for myself. My message is never give up. You get up, pick up your books and keep walking in your moccasins."

Shannen Koostachin led a campaign inviting thousands of Non-Aboriginal children to write to the Canadian Government to ensure safe and comfy schools and culturally based education for First Nations children. It was the largest child led campaign to realize child rights in Canada. Shannen wrote to the UN Committee on the Rights of the Child in 2008 saying she would submit a shadow report when Canada came up for review. Sadly, Shannen died in a car accident in the spring of 2010 at the age of 15 while attending school far away from her home because the high school in her home community sat on a contaminated brown field and was so dramatically under-funded by the Canadian Government that she could not get the education she needed to become a lawyer.

INTRODUCTION: CANADA FIGHTING TO DISCRIMINATE AGAINST VULNERABLE CHILDREN

Canada's lawyer has to come up with a good reason as to why the Tribunal should be dismissed and really there is no reason except for the fact that the government is scared, and does not want justice to be done. It's no wonder the government doesn't want this to be public. It is quite embarrassing and sad to think that our government is trying to get out of its responsibility to provide the same quality of services to First Nations children in the child welfare system as they do to non-Native children. I am a student and I am aware and I am going to make sure other youth are aware. Cindy is speaking for others who cannot speak and that is amazing. So I am going to speak for others who cannot be here today and make sure they're aware.

—*Summer Bisson, student, Elizabeth Wyn Wood Secondary who came to watch the Canadian Human Rights Tribunal where First Nations allege Canada is racially discriminating against First Nations children by providing less child welfare benefit on reserves.*

Canada's conduct toward First Nations children creates so many violations of children's rights pursuant to the United Nations Convention on the Rights of the Child that it is often difficult to keep track. The most pronounced violation challenges one of the pillars of the Convention—the obligation of State Parties to not engage in government driven racial discrimination against children.

This submission begins by describing Canada's conduct at the Canadian Human Rights Tribunal on First Nations child and family services where First Nations allege that Canada is racially discriminating against First Nations children on reserve by providing lesser child welfare benefit than other children receive. Canada has spent hundreds of thousands of dollars to derail a full hearing on the facts at the Tribunal by relying on a series of legal technicalities instead of dealing with the problem. The submission then shows how inequities in elementary and secondary education on reserve undermine the potential of thousands of First Nations children trying to learn and grow up proud of their cultures and languages. Conditions of some First Nations schools rival those in the most desperate of third world countries with children having to attend school on grounds contaminated by thousands of gallons of diesel fuel, infested with snakes or in the case of one school, in tents. We share the story of Shannen Koostachin, a First Nations child from Attawapiskat First Nation, who led a campaign for "safe and comfy schools and culturally based equity in education" before tragically dying at the age of 15 years in a car crash while she attended school hundreds of kilometres away from her family because the school in her own community was so under-funded and sat next to a contaminated brown field. Finally, the submission demonstrates how First Nations children are often denied, or delayed receipt of government services available to all other children because the Federal and Provincial/territorial governments cannot agree on who should pay for First Nations children. These disputes

have devastating impacts as the story of Jordan River Anderson, a five year old from Norway House Cree Nation, who spent his whole life in hospital because Canada and Manitoba could not agree on who should pay for his at home care. Jordan tragically died at the age of five never having spent a day in a family home. The submission will rely heavily on the Government of Canada's own documents to demonstrate that it clearly knows about the discrimination and its impacts and then set out how Canada is actively working to undermine the right of First Nations children to non-discrimination. We also rely on the voices of many non-Aboriginal and First Nations children and youth who are standing with First Nations children, young people and leaders to ensure their rights under the UNCRC are fully realized.

It is important to note that the form of government based discrimination outlined in this document is not experienced by

other children in Canada. Shannen, and thousands of children like her, would be entitled to a proper school and a good education if she was not First Nations living on reserve. Jordan, and the thousands of children he represents, would have gotten the services he needed to go home if he was not First Nations living on reserve. Thousands of other children would be growing up safely with their families instead of in foster care if they were not First Nations living on reserve.

Given Canadian Prime Minister Harper's commitment to child and maternal health in the international stage, it is extraordinary that his government has done very little to address the dramatic inequities affecting First Nations children in Canada choosing to spend Canada's significant financial wealth on other projects such as the 1.2 billion to host the G-8, billions for fighter jets, 150 million on signs advertising how tax dollars are spent and most recently \$650,000 to buy a vase.

WHY FIRST NATIONS CHILDREN ON RESERVES GET INEQUITABLE GOVERNMENT SERVICES

Evidence of the unequal provision of government services to First Nations children on reserve by Canada is overwhelming (Assembly of First Nations, 2007; Auditor General of Canada, 2008; Canadian Welfare Council, 2009; Standing Committee on Public Accounts, 2009.) There are two criteria that drive the inequality—the child must be First Nations and the other is the child must live on reserve. For thousands of First Nations (Indigenous) children in Canada who meet these criteria, the reality is they get less funding, and thus benefit, for essential government services such as education, health and child

welfare care than other children receive even though the needs of First Nations children are higher.

The reason for this inequality is that although provincial/territorial child welfare, health and education laws apply on reserves, the federal government funds these services. When the federal government does so at a lesser level, or not at all, the provinces/territories typically do not top up the funding levels resulting in a two tiered system where First Nations children on reserves get less funding, and thus less services and benefit, than other children enjoy.

THE CANADIAN HUMAN RIGHTS TRIBUNAL ON FIRST NATIONS CHILD AND FAMILY SERVICES (CHILD WELFARE) www.fnwitness.ca



i am a witness
www.fnwitness.ca

First Nations children are tragically over-represented among children in child welfare care. The Auditor General of Canada (2008) notes that First Nations children are 6-8 times more likely to be placed into foster care because of cases of neglect fuelled by factors that are often outside of parental control such as poverty, poor housing and substance misuse. The good news is that Canada holds the levers to improve all of these factors on reserves via its various housing, economic development, substance misuse and First Nations child and family services programs. First

Nations child and family service agencies operate on reserves and are funded by the federal government and the federal government insists that First Nations agencies use provincial/territorial child welfare laws. The Concluding Remarks of the UNCRC cited First Nations child and family service agencies as a positive practice in Canada's second periodic review in 2003. There have been longstanding concerns about the under-funding of these agencies especially the lack of services to help families safely care for their children at home. First Nations child and family service agencies and leadership worked with the Federal Government for over ten years on two reports documenting the inequalities in First Nations

I went to the Tribunal Hearing because I realized that what is happening isn't right and it's just more assimilation. By being there, it shows that I care and that young people care and take an interest. The government lawyer just talked around the issue. He just said so much stuff that was useless and not worth being said. I felt he was trying to somehow trick people into thinking the issue is just not theirs to worry about. Basically, I felt he was trying to get Canada out of something and that's just not right.

—From: Jon Dundas, Elizabeth Wyn Wood student, June 2, 2010, Ottawa. John was one of several non-Aboriginal youth who have pledged to come to the tribunal hearings and report their views.

child and family service funding and proposing solutions to deal with the problem but the Canadian government failed to fully implement either option. In 2007, the Assembly of First Nations (the political organization representing all First Nations in Canada) and the First Nations Child and Family Caring Society (a national NGO for Aboriginal children) filed a human rights complaint against the Government of Canada alleging that the Federal Government's failure to provide equitable and culturally based services to First Nations children on reserve amounted to discrimination on the basis of race and national ethnic origin. This historic case marks the first time in history that Canada will be held to account for its current treatment of First Nations children before a body with the power to make enforceable orders. Thousands are following the case, particularly children and youth, in the "I am a witness" campaign that invites caring individuals and organization to follow the case (see www.fnwitness.ca). Thanks to many caring Canadians, the Canadian Human Rights Tribunal on First Nations Child Welfare is now the most formally watched legal case in Canadian history.

Canada is not fighting the case on the merits, it is trying to escape a full hearing on the merits by arguing that it does not directly deliver child and family services (First Nations child welfare agencies do) and thus the Federal Government should not be held accountable for its role in First Nations child and family services, including inequitable funding levels. This is splitting hairs as it is obviously impossible for First Nations child and family service agencies to deliver a service if there is no money to do so or if the money is structured in ways that are not responsive to community needs. If successful with this argument, Canada effectively off loads its responsibility for discrimination against children arising from its policies and practices onto First Nations agencies that have no power to remedy the discrimination. Canada has tried to get the

case dismissed at Federal Court on two occasions and was unsuccessful. It then brought a motion to the Canadian Human Rights Tribunal itself to get dismissed on these same grounds and we are currently awaiting the decision. Canada has also opposed measures to broadcast tribunal hearings so that First Nations children can watch the tribunal from their homes across Canada (in keeping with Article 12 of the Convention). All other parties to the Tribunal case are in support of ensuring full public, and particularly child participation, in the tribunal including the broadcasting of the proceedings. Canada's substantial efforts to avoid a full and public hearing on the facts should raise significant concerns among all Canadians and the international community. What are they hiding?

Canada currently uses three main funding policies for First Nations child and family services. Directive 20-1 (used in BC and New Brunswick) and generally thought to be the most inequitable, the 1965 Indian Welfare Agreement applied in Ontario which has not been updated or reviewed in 46 years and the enhanced funding arrangement applied in Alberta, Saskatchewan, Manitoba, Nova Scotia and Quebec. The latter arrangement is one that the Government of Canada showcases as its primary response to the longstanding inequities affecting First Nations children in foster care. All have been found by independent reports to be flawed and inequitable.

Canada's own documents demonstrate that it not only knows about the inequality but it is also aware that the inequality is driving First Nations children into foster care because family support services available to other families are not available. Quoting the Canadian Government (as represented by the Department of Indian and Northern Affairs Canada) directly:

"Lack of in-home family support for children at risk and inequitable access to services have been identified by First Nations Child and Family Services Agencies, and INAC, as important contributing factors to the over representation of Aboriginal children in the Canadian child welfare system... provincial governments have written to Ministers of INAC and intergovernmental affairs indicating that INAC is not providing sufficient funding to permit First Nations child and family services agencies to meet their statutory obligations under provincial legislation."

—INAC internal document dated 2004 obtained under access to information (Document number 2372)

Another INAC document described the impacts of the Directive 20-1 which is currently applied to thousands of children in BC and New Brunswick in this way:

“Circumstances are dire. Inadequate resources may force individual agencies to close down if their mandates are withdrawn, or not extended, by the provinces. This would result in the provinces taking over responsibility for child welfare, likely at a higher cost to Indian and Northern Affairs Canada (INAC)”

This view was shared by the Auditor General of Canada in her thorough review of Canada’s First Nations child and family services program. The Auditor General (2008) found that all funding formulas, including the enhanced approach that Canada continues to advance as the exclusive option to deal with the inequities, are flawed and inequitable. Quoting the Auditor General of Canada directly:

“4.64 However, we also found that the new formula does not address the inequities we have noted under the current formula. It still assumes that a fixed percentage of First Nations children and families in all the First Nations served by an agency need child welfare services. Consequently, in our view, the new formula will not address differing needs among First Nations. Pressures on INAC to fund exceptions will likely continue to exist under the new formula.”

—Auditor General of Canada (May, 2008)

A year later, the Standing Committee on Public Accounts (2009) found that despite the Auditor General citing significant flaws in the enhanced approach being cited by the Government as the solution to the problem, there was no evidence that Canada had addressed the problem.

INAC also undertook an internal evaluation of the implementation of the Enhanced Funding Formula in Alberta and summarizes the findings in a presentation deck entitled *Implementation Evaluation of the Enhanced Prevention Focused Approach (EPFA) in Alberta: preliminary findings, May 14, 2010*. The findings of this INAC commissioned study are summarized on presentation slides 18 and 19 include the following passages:

“75% of DFNA [First Nations child and family service agencies in Alberta] interviewees reported not enough funds for full implementation”

—INAC internal document obtained under Access to Information (document number 2365)

Clearly, this evaluation demonstrates some significant shortcomings in the enhanced prevention based approach. INAC, however, continues to offer the enhanced approach with all of its flaws as the exclusive funding alternative to the Directive 20-1.

It does not appear that INAC has taken any meaningful steps to redress the flaws of the enhanced approach identified by the Auditor General in 2008. It continues to fight against having a full and public hearing on the merits at the Tribunal.

We requested in writing, that the Government of Canada respond to these issues in their country report submitted to the UN Committee on the Rights of the Child on the occasion of their third and fourth periodic reports but Canada substantively failed to do so. Canada’s country report does mention its First Nations child and family services program and its efforts to roll out the enhanced approach. However, the report fails to mention that the enhanced approach has been ruled inequitable and that Canada is subject to a Canadian Human Rights complaint brought by First Nations alleging that Canada is discriminating against First Nations children by providing inequitable child welfare services on reserves. Canada’s failure to mention the human rights tribunal on First Nations child and family services raises concerns about how complete and accurate Canada’s country report is.

First Nations agencies were recognized as in the United Nations Committee on the Rights of the Child as being a marker of best practice by Canada. They received numerous awards of excellence for their culturally base services despite the dramatic under-funding. First Nations want to do better for First Nations children. The outstanding question is whether the Canadian Government is prepared to do its part and immediately ensure full and proper culturally based equity in children’s services on reserve. While Canada tries to derail a hearing on the merits at the tribunal and rationalizes ongoing inequities to children, the number of First Nations children being removed from their families, often being placed outside of their culture and away from their community, continues to climb at record levels.

SHANNEN'S DREAM AND CANADA'S SYSTEMIC UNDER-FUNDING OF ELEMENTARY AND SECONDARY EDUCATION ON RESERVES www.shannensdream.ca

It is unacceptable in Canada that First Nations children cannot attend a safe and healthy school. It is unacceptable in Canada for First Nations education to languish with outdated laws, policies and funding practices that do not support basic standards. It is time for fairness and equity. Shannen Koostachin stood up for justice so the young people coming behind her might have an equal opportunity for a quality education in her community, just like young people have in communities throughout Canada. Now is the time for fairness, justice, and equity. Now is the time to realize Shannen's Dream.

—Shawn A-in-chut Atleo National Chief,
Assembly of First Nations

The Auditor General of Canada has repeatedly found that the Federal Government (as represented by the Department of Indian Affairs and Northern Development [INAC]) provides insufficient and inequitable funding for proper schools and culturally based education on reserves. Quoting the Auditor General of Canada (2004) directly:

"5.2 We remain concerned that a significant education gap exists between First Nations people living on reserves and the Canadian population as a whole and that the time estimated to close this gap has increased slightly, from about 27 to 28 years [given the Government of Canada's current approach to addressing the inequities]."

There is little evidence to suggest that Canada is making any significant progress in addressing the gap. Current estimates are that First Nations children on reserves receive \$2000–\$3000 less per student per year for elementary and secondary education even though First Nations children are far less likely to graduate from high school. This shortfall means less funding for teachers, special education, teaching resources such as books, science and music equipment and other essentials that other children in Canada receive. There is no funding provided by INAC for basics such as libraries, computer software and teacher training, the preservation of endangered First Nations languages, culturally appropriate curriculum or school principals.

The problem is compounded by significant shortfalls in the schools themselves (termed capital expenditures). INAC is the exclusive funder of First Nations schools on reserve and the

condition of many schools is extremely poor.

For example, in 2009, the Parliamentary Budget Officer (PBO) conducted a review of INAC's funding and policies for First Nations schools across Canada. Specifically, the PBO found that INAC reports that only 49 percent of schools on reserves are in good condition, 76 percent of all First Nations schools in BC and Alberta were in poor condition and 21 percent had not been inspected for condition at all. Overall, the PBO found that all 803 First Nations schools will need replacement by 2030 but INAC does not appear to be on track to make that happen as it appears to be significantly under-estimating what it needs to provide to maintain and build proper schools. Quoting the PBO directly:

"Thus according to the PBO projections, for FY2009-10, INAC's plans for capital expenditure are under-funded to the tune of between \$169 million in the best case, and \$189 million in the worst-case scenario annually, as depicted in the chart above. Thus, the annual INAC Planned Capital Expenditures according to its CFMP LTCP underestimates the likely expenditures compared to the PBO Best-Case and Worst-Case Projections (by more than 58%)."

These figures fail to capture the full impacts of the poor schools and inequitable education on children. For example, a school in Manitoba had to be closed and replaced with portable trailers because it became infested with snakes. The snakes had infested the water system so that when children turned on the taps, baby snakes would come out. Another group of children in Manitoba had to start school in 2009 in tents as there was no school building available in their community. Some First Nations children go to school in shifts because the school buildings are so over-crowded that there is not enough room for all students to attend at the same time. It is routine, for many First Nations children to have to be sent away from their families and communities to go to school as there is no school in their communities.

Shannen Koostachin (1995–2010) was from Attawapiskat First Nation. Her school was contaminated by approximately 30,000 gallons of diesel fuel that leaked into the ground. The Government of Canada finally closed the school in 2000 after repeated complaints from students and staff that they were getting sick. The Government brought up portable trailers



as a temporary measure. Ten years later the portables were extremely run down, often losing heat in the minus 40 degree temperatures, and three Ministers of INAC failed to deliver on their promises to the children of Attawapiskat to provide a new school. Shannen Koostachin, was in grade 8 at the JR Nakogee School, which was actually a series of trailers, in 2008 and had never attended a proper school. She, and other youth, organized the younger children in the community to write to the Prime Minister to demand a new school. As Shannen said "school is a time for dreams and every kid deserves this." The Government of Canada wrote back to say they could not afford a new school for the children of Attawapiskat. Upon receiving the letter saying they would not get a new school, the grade 8 class decided to cancel their graduation trip and use the money to go and see the Minister of INAC instead to ask for a new school. Shannen Koostachin and two other youth, went to see Minister Strahl in Ottawa but he said he could not afford a new school. Shannen told him she did not believe him and that she would continue to fight until every child in Canada got "safe and comfy schools" and equitable education. She engaged non-Aboriginal children to write letters to the Government of Canada demanding a proper

education for First Nations children and hundreds responded. In 2008, the Government of Canada said Attawapiskat would get a new school after all but three years later, construction has not begun and many other First Nations children across Canada continue to be denied equitable education and proper schools. Shannen was nominated for the International Children's Peace Prize given out by Kids Rights Foundation in the Netherlands in 2008. She and her family made the difficult decision to send her hundreds of miles away from her family to get a proper education off reserve. Shannen Koostachin, died in a car accident while she was away attending school. She wanted to be a lawyer to fight for the education rights of First Nations children.

Thousands of First Nations and non-Aboriginal children, youth and supporting adults are now working with Shannen's family to carry her dream of "safe and comfy schools" and culturally based and equitable education forward in a campaign called "Shannen's Dream."

The Government of Canada recently announced yet another study on First Nations education. Meanwhile, the children wait to be treated equitably and as Shannen noted "they are losing hope by grade 5 and dropping out."

JORDAN'S PRINCIPLE: WHEN GOVERNMENTS FIGHT OVER WHO SHOULD PAY FOR SERVICES FOR FIRST NATIONS CHILDREN—THE CHILDREN LOSE OUT

www.jordansprinciple.ca



Canada and the Provinces/territories do not always agree on which level of government is responsible for paying for services to First Nations children when that same service is available to all other children. A 2005 report identified 393 disputes between the Federal and Provincial/territorial governments impacting First Nations children in just 12 of the 108 First Nations child and family service agencies in one year alone.

Just as with the problems with short-funding child welfare and education, the impacts of government red tape are devastating for children. Jordan River Anderson of Norway House Cree Nation was born with complex medical needs and remained in hospital for the first two years of his life. When doctors said he could go to a family home, all the services he needed were available but Canada and Manitoba could not agree on which government should pay for the services since Jordan was a First Nations child whose parents lived on reserve. If Jordan was non-Aboriginal he would have been able to home and the Manitoba government would have picked up the bill. As Jordan was First Nations, Manitoba nor the Federal Government wanted to pay so government officials left Jordan

At 5:30 p.m. on December 12, 2007, members of Parliament stood in unanimous support of Private Members' Motion-296 supporting Jordan's Principle and followed with a standing ovation for the Anderson family and all those who supported Jordan's message. It was, by all accounts, a wonderful day, but, as Ernest Anderson warned, the good that was accomplished in Jordan's name that day would be little more than a victory in name only if Canada and the provinces/territories did not immediately move to implement Jordan's Principle.

—UNICEF Canada, "Leave no child behind." p. 49

in a hospital while they argued over who should pay for each item related to Jordan's care. Over two years passed, and despite numerous pleadings from Jordan's family, First Nation and medical staff at the hospital, the governments continued to put their concerns about payment before Jordan's welfare. Sadly, just before Jordan's fifth birthday he died in hospital never having spent a day in a family home. While the Anderson family buried their child, the Governments of Canada and

Manitoba continued to argue over his care, and who should pay for the care of other children.

In memory of Jordan, and in keeping with the non-discrimination provisions of the UNCRC, Jordan's Principle was created. It is a child first principle to resolving government jurisdictional disputes about payment for services to First Nations children when that same government service is customarily available to all other children. It says that where a government service is available to all other children and a jurisdictional dispute arises over which government should pay for services to a First Nations child, the government of first contact pays for the service and then resolves the dispute with the other government as a secondary matter.

A Private Members Motion tabled by Member of Parliament, Jean Crowder, unanimously passed in the House of Commons in 2007 stating that **"in the opinion of the House the government should immediately adopt a child-first principle, based on Jordan's Principle, to resolve jurisdictional disputes involving the care of First Nations children."**

Incredibly, instead of taking immediate action to fully and properly implement Jordan's Principle across all Government services, the Canadian Government began trying to narrow

Jordan's Principle to only apply to children with complex medical needs with multiple service providers. It did so without consulting Jordan's family or First Nations.

To be fully implemented, each province and territory must also fully adopt and implement Jordan's Principle but as the Canadian Paediatric Society reported in 2009, only one province, Nova Scotia, received a good rating for implementing this fundamental principle of non-discrimination.

Reports of children on reserves being denied equitable access to services of equitable quality to those provided off reserve continue to mount. Only months after Jordan's Principle passed through the House of Commons, Canada and Manitoba argued over who should pay for feeding tubes for two chronically ill children living with their loving family on reserve. Meanwhile the family was making a heart wrenching choice—do they rewash the feeding tubes and risk infection to their children or not feed them at all? Canada has hired a person to coordinate Jordan's Principle cases and while this is encouraging—Canada continues to rely on a case by case approach which failed Jordan and is not meaningfully engaging with First Nations on the identification and response to children caught in situations that could be remedied by the full and proper implementation of Jordan's Principle.

CONCLUSION

Canada is party to numerous international human rights conventions and takes its obligations under these and other international instruments seriously. The treaties binding on Canada as a State party include: the International Covenant on Civil and Political Rights, the International Covenant on the Elimination of Racial Discrimination and the Convention on the Rights of the Child. However, these treaties are not directly enforceable in Canadian law.

—Submissions by Canada to the
Canadian Human Rights Tribunal (May 21, 2010)

Canada's position that the UNCRC is not directly enforceable under Canadian law raises questions as to why Canada would not want the UNCRC to directly guide its duties to children. The UNCRC and UNCRC General Comment 11 make it clear that State Parties have a duty to *ensure* the non-discrimination of children particularly within government laws, policies and practices. Non-discrimination is a fundamental principle woven through all sections of the UNCRC and yet, as demonstrated in this report, Canada is taking aggressive steps to ensure it can continue to treat First Nations children inequitably.

Further, Canada endorsed the United Nations Declaration on the Rights of Indigenous Peoples on November 12, 2010 and one month later filed this submission with the Canadian Human Rights Tribunal in the child and family services case detailing its views on the Declaration:

"The Declaration is not a legally binding instrument. It was adopted by a non-legally binding resolution of the United Nations General Assembly. As a result of this status, it does not impose any international or domestic legal obligations upon Canada. As Canada noted in its public statement of support, the Declaration does not change Canadian laws. It represents an expression of political, not legal, commitment. Canadian laws define the bounds of Canada's engagement with the Declaration."

—Attorney General of Canada, December 17, 2010

Clearly, Canada's acceptance of the United Nations Declaration of Indigenous Peoples is bracketed by Canada's political and legal views of the document which fail to respect the spirit and intent of the United Nations Declaration on the Rights of Indigenous Peoples.

Canada is one of the richest countries in the world with every capability of fully implementing the United Nations Convention on the Rights of the Child and as such should be held to the highest standard by the United Nations Committee on the Rights of the Child. In the Concluding Remarks of the second periodic review of Canada, The United Nations Committee on the Rights of the Child repeatedly directed Canada to close the gap in life chances between Aboriginal and non-Aboriginal children and yet little progress has been made. Canada knows it is providing inequitable children's services to First Nations children on reserves, it has solutions to address the problem and resources to do it and yet Canada is choosing to resist efforts to fully address the problem. Canada will often cite how much it spends on First Nations children without drawing attention to the fact that this amount falls far short of what is required. Canada's attempts to avoid a hearing on the facts to determine whether it's service delivery is racially discriminatory or not and its failure to disclose the Canadian Human Rights Tribunal to the United Nations Committee on the Rights of the Child in its country report raise concerns about its accountability.

It is time for the International community to join with First Nations children, families and leaders and with our many non-Aboriginal allies (particularly children) in Canada to demand that Canada ensure FULL EQUITY AND CULTURALLY BASED SERVICES for First Nations children on reserves immediately. Consistent with Canada's Obligations pursuant to the United Nations Convention on the Rights of the Child and UNCRC General Comment 11, the following recommendations are respectfully made to the UNCRC in consideration of Canada's periodic review:

1. Canada immediately take measures to fully report on the CRC's concluding observations for Canada arising from the Committee's review of Canada's 1st and 2nd periodic reports with specific and detailed responses to concluding observations specifically referencing, or particularly relevant to, Aboriginal children numbered: 5, 13,15,18,19, 20, 21, 22, 23, 24, 25, 26, 34, 35, 36,37,38,41 42, 43, 44, 45, 52, 53, 58, and 59. Such responses should refer to the Charter of Rights and Freedoms and other domestic protections for child rights as well as relevant international treaty body instruments and standards with specific attention to UNCRC General Comment 11, The Declaration on the Rights of Indigenous Peoples, the Covenant on Economic, Social and Cultural Rights, and the Universal Declaration on Human Rights. Responses should be specific and measurable and include information on: 1) the involvement of affected Aboriginal peoples and their representative organizations in the design, implementation and evaluation of government actions to address the concluding remarks, impacts of these efforts and any future plans to build on previous progress or address shortcomings.
2. Given the gravity of the rights violations experienced by First Nations children in Canada and the fact that no barriers exist to Canada fully implementing the UNCRC, it is recommended that the Committee on the Rights of the Child engage a special study on Canada's implementation of the UNCRC with respect to the rights of First Nations children pursuant to section 45 (c). Such a study could be done in partnership with the United Nations Permanent Forum on Indigenous Peoples as the International Expert Group Meeting (EGM) on Indigenous Children and Youth in Detention, Custody, Foster-Care and Adoption called for in its 2010 report submitted to the Permanent Forum on Indigenous Peoples. The study would independently document cases of government sourced discrimination against First Nations children and young people and serve to encourage States in similar positions to take progressive action to ensure the full enjoyment of rights under the Convention for all children.
3. Consistent with the UNCRC paying particular attention to Articles 2, 17, 18,19,21,26 and 30 as interpreted in UNCRC General Comment 11, Canada, with the full involvement of First Nations peoples, take immediate and effective measures to allocate and structure sufficient financial, material and human resources to ensure the safety, best interests and cultural linguistic rights of First Nations children giving them every opportunity to grow up safely in their families and communities.
4. Consistent with Articles 2 and 12, Canada immediately stop all actions designed that aim to avoid or delay a full and public hearing on the facts to determine whether or not its policies and practices in First Nations child and family services amount to racial discrimination against children. Canada must also ensure the hearings are broadcast in full so that First Nations children and their families can watch the tribunal given that the proceedings directly affect them.
5. Consistent with the UNCRC paying particular attention to Articles 2, 28, 29, 30 as interpreted in UNCRC General Comment 11, Canada, in full partnership with First Nations Peoples organizations and experts, take immediate and effective measures to allocate, and structure, sufficient financial, material and human resources to ensure the full enjoyment of education, cultural and linguistic right for Indigenous children.

6. Consistent with the UNCRC paying particular attention to Articles 2, 4, 6, Canada, in full partnership with Indigenous Peoples, take immediate and effective measures, such as the full and proper adoption of Jordan's Principle, to ensure that government jurisdictional disputes in no way impede or delay First Nations children receiving government services available to all other children.
7. Consistent with Article 12, that Canada take immediate and effective measures to establish a national and independent mechanism with the power to implement reforms is available to receive, investigate and respond to reports of individual and systemic child rights violations.
8. Consistent with the UNCRC, that Canada ensures its domestic laws, government policies and practices are fully consistent with the United Nations Convention on the Rights of the Child and implements immediate and effective measures to ensure First Nations children, young people and families are aware of their rights under the Convention.